

1 HOUSE BILL NO. 100

2 INTRODUCED BY B. BERGREN

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE DEPARTMENT OF REVENUE'S COLLECTION
6 RESPONSIBILITIES; IMPOSING JOINT AND SEVERAL LIABILITY FOR TAXES HELD IN TRUST FOR THE
7 STATE ON CORPORATE OFFICERS, PARTNERS, AND MEMBERS AND MANAGERS OF LIMITED LIABILITY
8 COMPANIES; CLARIFYING THAT A SHERIFF'S FEES ARE ADDED TO THE BALANCE OF A WARRANT FOR
9 DISTRAINT; ALLOWING A NOTICE OF LEVY OF A WARRANT FOR DISTRAINT TO BE SERVED
10 ELECTRONICALLY; AUTHORIZING THE DEPARTMENT OF REVENUE TO ENTER INTO CONTRACTS FOR
11 OUT-OF-STATE COLLECTIONS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS
12 15-1-706 AND 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE."

13

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15

16 NEW SECTION. **Section 1. Trust taxes -- definitions.** As used in [sections 1 through 4], the following
17 definitions apply:

18 (1) "Financial officer" means the officer of a corporation whose responsibility it is to collect, truthfully
19 account for, and pay to the state a trust tax.

20 (2) "Responsible corporate officer" means each officer of a corporation who has access to the requisite
21 records and either possessed the responsibility to file statements and pay taxes on behalf of the corporation or
22 possessed the responsibility on behalf of the corporation for directing the filing of tax statements or the payment
23 of other corporate obligations and exercised that responsibility, resulting in the corporation's failure to pay a trust
24 tax or file a statement related to a trust tax.

25 (3) "Trust tax" means a tax imposed in:

26 (a) Title 10, chapter 4, part 2, related to the basic and enhanced 9-1-1 service fees;

27 (b) Title 15, chapter 53, related to the retail telecommunications excise tax;

28 (c) Title 15, chapter 65, related to the lodging facility use tax;

29 (d) Title 15, chapter 68, related to sales and use taxes on accommodations, campgrounds, and rental
30 vehicles; and

1 (e) Title 53, chapter 19, part 3, related to the specialized telecommunications equipment and services
2 assessment.

3
4 **NEW SECTION. Section 2. Trust taxes -- joint and several liability.** For the purpose of determining
5 liability for the filing of tax statements related to trust taxes, the remittance of trust taxes, and payment of penalties
6 and interest related to trust taxes:

7 (1) each financial officer and responsible corporate officer are jointly and severally liable, along with the
8 corporation;

9 (2) each partner of a partnership is jointly and severally liable, along with the partnership, for any
10 statements, taxes, penalties, and interest due while a partner;

11 (3) each member of a limited liability company that is treated as a partnership or as a corporation for
12 income tax purposes is jointly and severally liable, along with the limited liability company, for any statements,
13 taxes, penalties, and interest due while a member;

14 (4) the member of a single-member limited liability company that is disregarded for income tax purposes
15 is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and
16 interest due while a member; and

17 (5) each manager of a manager-managed limited liability company is jointly and severally liable, along
18 with the limited liability company, for any statements, taxes, penalties, and interest due while a manager.

19
20 **NEW SECTION. Section 3. Trust taxes -- bankruptcy of entity.** The liability that is imposed in [section
21 2] on a financial officer, responsible corporate officer, partner, or member or manager of a limited liability
22 company remains unaffected by the discharge in bankruptcy of any trust tax or penalty or interest related to the
23 trust tax of the entity.

24
25 **NEW SECTION. Section 4. Out-of-state collections -- authority to enter into contracts -- statutory**
26 **appropriation.** The department may enter into contracts with out-of-state attorneys and state tax agencies and
27 others located outside the state for out-of-state collections when it determines that the amount collected under
28 a contract will likely exceed the cost of collection. The department shall deposit the gross amount collected in the
29 general fund. The costs of collection are statutorily appropriated, as provided in 17-7-502, from the general fund
30 to the department for the purposes of this section.

1

2 **Section 5.** Section 15-1-706, MCA, is amended to read:

3 **"15-1-706. Execution upon warrant.** (1) Upon receipt of a copy of the filed warrant and notice from the
4 department that the applicable hearing provisions have been complied with, the sheriff or agent authorized to
5 collect the tax shall proceed to execute upon the warrant in the same manner as prescribed for execution upon
6 a judgment. The sheriff is entitled to fees or compensation as provided by law incurred in executing upon the
7 judgment. The amount of the fees or compensation must be added to the amount of the warrant.

8 (2) A notice of levy may be made by electronic means ~~of a~~ or by certified letter by an agent authorized
9 to collect the tax. An agent is not entitled to any fee or compensation in excess of actual expenses incurred in
10 enforcing the warrant.

11 (3) When issued, a notice of levy has the same force and effect as a writ of execution. A levy upon
12 earnings continues in effect for 120 days or until the judgment is satisfied, whichever occurs first. The levy applies
13 ~~to all pay periods beginning during the 120-day period~~ earnings due on or after the date of service of the notice
14 of levy through the expiration of the levy.

15 (4) A sheriff or agent shall return a warrant, along with any funds collected, within 90 days of the date
16 of the warrant.

17 (5) If the warrant is returned not satisfied in full, the department has the same remedies to collect the
18 deficiency as are available for any civil judgment."
19

20 **Section 6.** Section 17-7-502, MCA, is amended to read:

21 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
22 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the
23 need for a biennial legislative appropriation or budget amendment.

24 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both
25 of the following provisions:

26 (a) The law containing the statutory authority must be listed in subsection (3).

27 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory
28 appropriation is made as provided in this section.

29 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407;
30 5-13-403; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; [section

1 4]; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369;
 2 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319;
 3 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107;
 4 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306;
 5 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504;
 6 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870;
 7 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161;
 8 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

9 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
 10 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
 11 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana
 12 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state
 13 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
 14 appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of
 15 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L.
 16 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's
 17 unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates
 18 July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion
 19 of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202,
 20 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005,
 21 the inclusion of 15-31-906 terminates January 1, 2010.)"

22
 23 **NEW SECTION. Section 7. Codification instruction.** [Sections 1 through 4] are intended to be codified
 24 as an integral part of Title 15, chapter 1, and the provisions of Title 15, chapter 1, apply to [sections 1 through 4].
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26 **NEW SECTION. Section 8. Effective dates.** (1) Except as provided in subsection (2), [this act] is
 27 effective July 1, 2007.

28 (2) [Sections 1 through 3 and this section] are effective on passage and approval.
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30 **NEW SECTION. Section 9. Applicability.** [Section 2] applies to:

- 1 (1) tax statements due on and after [the effective date of section 2];
- 2 (2) the remittance of trust taxes collected on and after [the effective date of section 2]; and
- 3 (3) penalties and interest that accrue on and after [the effective date of section 2].

4 - END -